In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 22-1065V

Originally Filed: September 7, 2022 Reissued for Public Availability: October 11, 2022

Denise Baptiste, Waterbury, CT, *pro se* Heather Pearlman, U.S. Department of Justice, Washington, DC, for Respondent

DECISION DISMISSING PETITION¹

On August 24, 2022, Denise Baptiste ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, alleging that she suffers from lymphedema and diabetes resulting from adverse effects of the Covid-19 Moderna vaccine she received on February 21, 2021. Pet. at 1.

I held a status conference on September 7, 2022, at which time I explained to Petitioner that her claim suffered from procedural deficiencies and could not proceed as filed. To be entitled to compensation under the Vaccine Act, a petitioner must demonstrate that he or she received a vaccine listed on the Vaccine Injury Table (the "Table"). See §11(c)(1)(A). Vaccines are added to this Table only after two steps occur. First, compensation in the Program can only awarded to individuals "who have been injured by vaccines routinely administered to children." H.R. Rep. 99-908, 1986 U.S.C.C.A.N. 6344 at 3. Thus, the vaccine at issue must be designated by the Centers

¹ Pursuant to Vaccine Rule 18(b), this decision was initially filed on September 7, 2022, and the parties were afforded 14 days to propose redactions. The parties did not propose any redactions. Accordingly, this decision is reissued in its original form for posting on the Court's website.

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) ("Vaccine Act" or "the Act"). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

for Disease Control as appropriate for children or pregnant women (even if it is also administered to adults). Second, an excise tax must be enacted by Congress on each vaccine listed on the Table to provide funds for compensation for possible injury resulting from a vaccine. The date the tax is enacted is the date a vaccine becomes the basis for a claim in the Vaccine Program. *See* 26 U.S.C. § 4131(a); *see also* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, § 13632(a)(3), 107 Stat. 312 (1993).

The Covid-19 vaccine does not yet appear on the Table, and as a result, it is not covered by the Vaccine Program. Petitioner therefore cannot show that she "received a vaccine set forth in the Vaccine Injury Table." Section 11(c)(1)(A). As a result, the petition must be dismissed. *See, e.g., Danberry v. Sec'y of Health & Hum. Servs.*, No. 20-0778V, 2020 WL 6375330 (Fed. Cl. Spec. Mstr. Sept. 28, 2020) (dismissing a claim seeking compensation for injuries incurred after receiving Pneumovax-23 and Shingrix—two vaccines that are not set forth in the Table).

I encourage Petitioner to visit: http://www.cofc.uscourts.gov/vaccine-programoffice-special-masters and click on: COVID-19 Vaccine Injury Claims for further information.

CONCLUSION

Accordingly, and for the aforementioned reasons, the Petition is dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of this Decision.³

A copy of this order shall be sent to Petitioner by regular U.S. mail at the following address:

Denise Baptiste 55 Mayberry Circle Apt 5 Waterbury, CT 06705

IT IS SO ORDERED.

s/ Katherine E. Oler Katherine E. Oler Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment if (jointly or separately) they file notices renouncing their right to seek review.